

UNITED STATES DEPARTMENT OF TRANSPORTATION  
FEDERAL AVIATION ADMINISTRATION  
WASHINGTON, DC

Served: March <sup>16</sup>/<sub>8</sub>, 1994

FAA Order No. 94-6

In the Matter of:

RAYMOND B. STROHL

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) Docket No. CP93GL0046  
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ORDER

When this case first came before the Administrator, its procedural history was unclear, and the Administrator ordered the parties to provide additional briefing. In the Matter of Strohl, FAA Order No. 93-28 (October 20, 1993). Having received further information from the parties, the procedural history of this case can be summarized as follows:

April 26, 1990	The Administrator suspended Mr. Strohl's airman certificate for a period of 180 days for performing acrobatic flight maneuvers at a low altitude in a congested area.
May 15, 1990	Mr. Strohl appealed the suspension to the National Transportation Safety Board (NTSB).
April 12, 1991	The parties entered into a settlement agreement that would become effective one week later, on April 19, 1991.
May 28, 1991	Mr. Strohl filed a motion to reinstate his appeal before the NTSB.

June 18, 1991	Administrative Law Judge Capps denied Mr. Strohl's motion to reinstate his appeal.
June 27, 1991	Mr. Strohl appealed Judge Capps' order to the NTSB.
August 28, 1991	The NTSB denied Mr. Strohl's request for review of Judge Capps' order.
March 4, 1992	A Notice of Proposed Civil Penalty of \$15,000 was issued to Mr. Strohl in the first civil penalty case (Case number 88-GL-25-0109(CP)) due to his failure to surrender his airman certificate. It was alleged that Mr. Strohl breached the settlement agreement entered into by the parties in the certificate action case by failing to surrender his airman certificate and by continuing to exercise the privileges of that certificate. <sup>1/</sup>
December 28, 1992	A Final Notice of Proposed Civil Penalty was issued in the \$15,000 civil penalty case.
December 28, 1992	A Notice of Proposed Civil Penalty was issued for \$25,000, in a second civil penalty case, for Mr. Strohl's <u>continued</u> failure to surrender his suspended certificate (Case number 88-GL-25-0109(CP2)). <sup>2/</sup>

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<sup>1/</sup> Although the Administrator initially sought a 180-day suspension, the parties agreed to a shorter suspension as part of the settlement. However, when Mr. Strohl breached the settlement agreement, the length of the suspension reverted back to 180 days.

<sup>2/</sup> This notice of proposed civil penalty states: "To date, you have continued to fail and refuse to surrender [your] Airman Certificate." (Emphasis added.) The notice does not specify the dates involved. As a result, it is unclear whether the time frames involved in the first and second notices of proposed civil penalty overlap.

January 4, 1993	Mr. Strohl returned the form requesting a hearing regarding the second civil penalty case, 88-GL-25-0109(CP2), to the Hearing Docket. Mr. Strohl indicated that he would be submitting proof that: (1) a violation of the regulations did not occur as alleged or that the amount of the civil penalty was not warranted by the circumstances and (2) he was financially unable to pay the proposed civil penalty or payment would prevent him from continuing in business. <sup>3/</sup>
January 27, 1993	An Order Assessing \$15,000 Civil Penalty was issued in the first civil penalty case.
January 27, 1993	A Final Notice of Proposed \$25,000 Civil Penalty was issued in the second civil penalty case.
February 6, 1993	Mr. Strohl sent the agency attorney a notice requesting appeal of the Order of \$15,000 Civil Penalty (88-GL-25-0109(CP)) and the Final Notice of Proposed \$25,000 Civil Penalty (88-GL-25-0109(CP2)).

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[Footnote continued from previous page]

<sup>2/</sup> In his additional brief, the agency attorney states as follows:

Since that time [the time of the filing of the notices of proposed civil penalty in this case] a procedure has been implemented to provide for a separate unique number to be used for failure to surrender certificates in Civil Penalty Actions to avoid the potential for confusion that the CP suffix used in this case has apparently generated.

Agency Response to Administrator's Order Requesting Further Briefing at 3, n.1.

<sup>3/</sup> Mr. Strohl apparently did not serve the request for hearing on the agency attorney. The agency attorney received a copy of it from the Hearing Docket on January 27, 1993.

February 22, 1993	The agency attorney sent Mr. Strohl a letter of clarification and an additional demand that the suspended certificate be surrendered.
February 24, 1993	Mr. Strohl surrendered his suspended certificate by mail. The agency attorney received it on March 1, 1993.
March 3, 1993	The agency attorney withdrew the complaint in the second civil penalty case.
March 3, 1993	The agency attorney sent Mr. Strohl a letter advising that the Order assessing a \$15,000 civil penalty was being sent for collection.
March 17, 1993	Law judge dismissed the proceeding in the second civil penalty case because the complaint had been withdrawn.
June 29, 1993	Mr. Strohl filed a "complaint" with the Hearing Docket alleging: (1) that the \$15,000 civil penalty was imposed on him without a proper hearing and procedure; and (2) that the \$15,000 civil penalty stemmed directly from the complaint filed by the FAA that the law judge dismissed. Mr. Strohl requested the withdrawal of any civil penalty actions against him and the return of his airman certificate.
July 8, 1993	The agency attorney moved to dismiss Mr. Strohl's "complaint" with prejudice on the ground that only agency attorneys may file a "complaint" under the Rules of Practice.
October 20, 1993	The Administrator ordered the parties to provide further briefing (Order No. 93-28).

In response to Order No. 93-28, the agency attorney filed an additional brief in which he clarified for the Administrator that there were two civil penalty cases against Mr. Strohl rather than one.<sup>4/</sup> The agency attorney argued that: (1) the order assessing civil penalty in the first action, for \$15,000, was properly assessed; and (2) the complaint in the second action, for \$25,000, was withdrawn and the proceeding was dismissed. Therefore, argued the agency attorney, the Administrator should dismiss Mr. Strohl's request for relief concerning the \$15,000 order in the first civil penalty action.

Instead of filing an additional brief, Mr. Strohl filed a letter from his new counsel stating that Mr. Strohl did not have the resources to pay him for preparing a brief. Mr. Strohl's new counsel went on to explain that Mr. Strohl's failure to surrender his suspended airman certificate should be attributed to Mr. Strohl's former counsel. According to the letter, Mr. Strohl had turned over his pilot certificate to his former counsel--although the letter does not specify when--but

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<sup>4/</sup> Until the receipt of the agency attorney's brief, the Administrator had not understood that there were two parallel civil penalty actions against Mr. Strohl. The Administrator had been unable to untangle this web of certificate and civil penalty actions because: (1) the record contained only a few of the pertinent documents; (2) the notices and final notices of proposed civil penalty in the two civil penalty actions are virtually identical; and (3) the parties failed to provide a complete and coherent history of this matter.

his former counsel refused to surrender Mr. Strohl's airman certificate to the agency attorney.<sup>5/</sup>

Mr. Strohl's new attorney also stated in his letter that the conduct of Mr. Strohl's former counsel has been called into question by authorities in other matters. His new attorney argued that, in view of the problems of Mr. Strohl's former counsel, the civil penalty action against Mr. Strohl should be terminated. At the very least, said Mr. Strohl's new counsel, a hearing should be granted to determine whether Mr. Strohl should be held accountable for the mishandling of his case by his former counsel.

The agency attorney's motion to dismiss Mr. Strohl's request for relief<sup>6/</sup> is denied. Mr. Strohl apparently did not understand that there were two separate civil penalty actions against him, both requiring the filing of a separate request for hearing. Mr. Strohl's confusion is understandable, given that the notices and final notices of proposed civil penalty action in the two cases were strikingly similar in so many respects, i.e., the allegations, the dates of issuance, and the docket numbers. The docket numbers in both cases were essentially the same--88-GL-25-0109. Although one docket

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<sup>5/</sup> Apparently, Mr. Strohl's former counsel mistakenly believed that Mr. Strohl's airman certificate should be held by an escrow agent.

<sup>6/</sup> Mr. Strohl's request for relief was erroneously captioned "Complaint." As the agency attorney correctly points out, only agency attorneys may file a "complaint" under the Rules of Practice. 14 C.F.R. § 13.218.

number had the suffix "CP" and the other had the suffix "CP2," this was not enough to put Mr. Strohl on notice that there were two separate actions.

Moreover, the documents filed in both cases appear to contain the same basic allegations. From the wording of the notice and final notice of proposed civil penalty in the second case, it is easy not to appreciate that these documents were issued because the first civil penalty action had failed to induce Mr. Strohl to surrender his suspended certificate. Indeed, the only indication in the documents in the two civil penalty actions that they apply to different time periods is as follows. The notice and final notice of proposed civil penalty in the first case provide: "To date you have failed to surrender [your] Airman Certificate," while the notice and final notice in the second case "To date, you have continued to fail and refuse to surrender [your] Airman Certificate." (Emphasis added.) Even if Mr. Strohl's counsel did understand that there were two civil penalty actions against his client, he may well have believed that the second civil penalty action was cumulative of the first.


In the interest of fairness, and due to the unusual and confusing<sup>7/</sup> circumstances of this case, Mr. Strohl's request for hearing, although technically filed only in the second civil penalty action, will be considered a timely request for

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<sup>7/</sup> Even the agency attorney recognizes that the documents could have been drafted more clearly to distinguish between the two civil penalty actions. See supra note 2.

hearing in the first civil penalty action as well. The agency attorney is granted 30 days from the date of service of this order to file a complaint in the first civil penalty action. The agency attorney is ordered to withdraw the order assessing civil penalty of \$15,000 in the first civil penalty action and to stop all collection efforts concerning that order. As for the second civil penalty action for \$25,000, that case has already been dismissed.

For the foregoing reasons, the agency attorney's motion to dismiss Mr. Strohl's request for relief is denied, and the agency attorney is granted 30 days from the date of service of this order to file a complaint in the first civil penalty action. Mr. Strohl will be required to file an answer within 30 days after service of the complaint, in accordance with 14 C.F.R. § 13.209.<sup>8/</sup>



DAVID R. HINSON, ADMINISTRATOR  
Federal Aviation Administration

Issued this 10th day of March , 1994.

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<sup>8/</sup> The answer should be filed with the Hearing Docket Clerk, whose address is: Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW, Room 924A, Washington, DC 20591. A copy must be served by Mr. Strohl on the agency attorney. For other requirements pertaining to the filing and service of an answer, Section 13.209 of the Rules of Practice in FAA Civil Penalty Actions, 14 C.F.R. § 13.209, should be consulted.